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C O N F I D E N T I A L SECTION 01 OF 02 GUATEMALA 000577

SIPDIS

E.O. 12958: DECL: 03/04/2015

TAGS: [ELAB](#) [ETRD](#) [PREL](#) [PGOV](#) [EAID](#) [GT](#)

SUBJECT: SMALL STEP FOR GUATEMALAN LABOR STANDARDS
ENFORCEMENT

REF: A. GUATEMALA 341

[B](#). GUATEMALA 280

[C](#). A/USTR PADILLA - OLSON E-MAIL

Classified By: Ambassador Hamilton, Reason: 1.4 (D)

[1](#). (U) Summary: Labor Courts have begun to impose fines on employers found by the Labor Inspectorate to be in non-compliance with the Labor Code. This shows a measure of political will, but without increasing resources to the labor courts, this process does not represent a functioning system of Labor Code enforcement. We continue to engage all levels of the government and private sector to achieve a solution that will return administrative sanction authority to the Labor Inspectorate. We believe that A/USTR Padilla's offer to contact the business organization CACIF would be helpful. End summary.

A kind of authority restored

[2](#). (U) The authority of the Guatemalan Labor Inspectorate (IGT) to assess fines on workplaces not in compliance with the Labor Code has been partially restored. Although inspectors still cannot directly (or unilaterally) impose fines on non-compliant employers, they can now present reports of infractions to Labor Court judges for punitive measures.

[3](#). (U) During the week of February 28, the Fifth Labor Court imposed fines on eight employers for Labor Code violations committed during 2004. These violations included illegal firings and failure to pay mandatory benefits. The fines ranged from quetzales 2,052 to 3,570 (USD 266 to 464), based on multiples of the average monthly minimum wage. By contrast, in the first three quarters of 2004, the IGT imposed 2,499 fines.

[4](#). (U) The umbrella business organization CACIF successfully challenged the IGT's sanction authority before the Constitutional Court in August 2004. CACIF's position since then has been that the IGT could act on behalf of the judiciary, but that fines should not be imposed administratively. CACIF leaders argue that this activity resolves the absence of sanction authority and that Guatemala now has a functioning Labor Code enforcement system.

[5](#). (C) This activity deviates from the Ministry of Labor's plan (ref A) to recommend that President Berger issue an executive order to restore sanction authority directly to the IGT. That order, drafted by Ministry of Labor staff, remains on the desk of Minister of Labor Gallardo, who returns today from the regional Ministers of Labor meeting in Costa Rica. Gallardo told the Ambassador February 4 that he would recommend that the President issue that executive order.

[6](#). (C) Vice Minister Mario Gordillo, acting in Gallardo's place, told us March 2 that they withdrew the order from the Presidential Secretariat in order to follow a judicial solution. Gordillo echoed the CACIF leadership's arguments that a Labor Code enforcement system is in place. The Ministry of Labor's Legal Advisor told us March 3 that when he argued in favor of direct administrative authority via an executive order, Gordillo threatened to fire him if he did not cease communicating with us.

[7](#). (C) According to the Legal Advisor, Gordillo said that CACIF had assured him that the U.S. Government was "bluffing" and that CAFTA was too important to us to let this issue be a true obstacle. Thus, Gordillo reportedly said, the judicial activity was sufficient. The Ambassador advised Vice President Stein March 3 and Foreign Minister Briz on March 4 that a functioning Labor Code enforcement system was indeed of real importance to the USG and urged for their collective action.

Comment

[8](#). (U) There are 28 labor courts. The eight fines approved this week are just baby steps toward resuming the rate of over 60 fines per week assessed by the labor inspectors prior

to the August 2004 ruling. We would have been pleased by this judicial approach had it been introduced several months ago as an emergency stopgap measure while legislation was drafted and approved. To restore the level of Labor Code enforcement evident in the rate of fines imposed before August 2004, however, it is inadequate. It represents a cumbersome additional step in the enforcement mechanism as a judge must hear the case and then issue a several-page legal decision. The judicial system cannot handle thousands of cases per year without a major increase in resources.

19. (C) We continue to engage CACIF on this issue, in hopes that they can reconcile their short-term goals with CAFTA passage. We would welcome contact between A/USTR Padilla and CACIF, as Padilla offered in the ref (C) e-mail. On the other side of the issue, Guatemala's major labor organizations have been silent on this issue, although they have been active in opposition to CAFTA. Indeed, the head of UASP, the largest such organization, was unaware of the issue until we briefed him March 3.

HAMILTON